



ORIGINAL

Jack N. Goodman

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Vice President/Policy Counsel  
Legal Department  
1771 N Street, N.W.  
Washington, DC 20036-2891  
(202) 429-5459  
Fax: (202) 775-3526  
Internet: jgoodman@nab.org

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

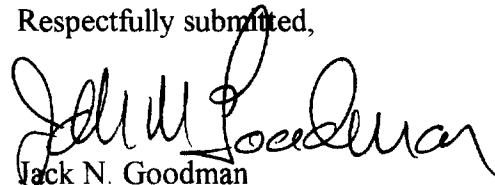
Re: CS Docket No. 96-46

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(1) of the Commission's Rules, enclosed are two copies of an ex parte presentation in the above-referenced docket. The matters addressed in the presentation were all discussed in the comments filed by the National Association of Broadcasters. The presentation was sent to the offices of all four Commissioners.

Any questions concerning this matter should be directed to the undersigned.

Respectfully submitted,



Jack N. Goodman

Enclosures

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- **Common elections should *not* be required for OVS and cable systems.** Common elections are only required if two “cable systems” serve the same area. Congress gave telcos the option of operating a cable system (and thus coming within the common election requirement) or of constructing an open video system which is not a cable system. Further, common elections are not feasible since open video systems will provide service over areas that may be served by hundreds of cable systems. Since Congress clearly envisioned that stations could make differing elections on a system-by-system basis, forcing a common election across a station’s service area would force a change in the way § 325 operates. Nothing in the Telecom Act or its legislative history indicates such an intent.\*
- **Must carry signals must be provided to all OVS subscribers.** Section 614(b)(7) of the Act states that must carry signals “shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber. . . .” If a station elects must carry on an open video system, the operator then must ensure that the station’s signal is actually provided to every system subscriber. Merely giving subscribers the option of buying a service that includes the must carry signals is not consistent with the Act. Whether the OVS operator chooses to provide a “basic tier” to all subscribers or employs a different business arrangement is up to the operator.
- **OVS operators should be responsible for compliance with the signal exclusivity rules.** The responsibility for ensuring that all programmers comply with the FCC’s syndex, network non-duplication, and sports exclusivity rules should be placed on the OVS operator. The identity and program offerings of independent programmers on a system may change without notice to local stations. Further, independent programmers may not hold licenses or be directly subject to FCC regulation. The only entity in a position to know who is supplying programming on an open video system is the operator. Stations should be permitted to notify the OVS operator of their exclusivity rights and the operator can require programmers to comply with those notices.

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\* On the separate issue of retransmission consent for different programmers on an open video system, an election of must carry effectively will apply to all program suppliers. An election of retransmission consent would apply to all programmers on a system, but would not require that the terms of retransmission agreements with different programmers be the same. Nothing in the Act permits the Commission to regulate the terms of retransmission agreements.

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